

JUL 21-1984

ALEXANDER L. STEVAS,
CLERK

CASE No. 83-2116

in the
Supreme Court
of the
United States

October Term, 1984

**MICHELE R. SCHRAM, as Personal Representative
of the Estate of MICHAEL GAYDOS, deceased, and
individually; MILLER ADAMS and MARY ADAMS,
his wife; and NICK ADAMS and JOSIE ADAMS,
his wife,**

Petitioners,

vs.

**DADE COUNTY, a political subdivision of
the State of Florida,**

Respondent.

**On Petition for a Writ of Certiorari to the
District Court of Appeal of Florida, Third District**

BRIEF OF RESPONDENT

ROBERT A. GINSBURG
Dade County Attorney
16th Floor
Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130
(305) 375-5151

By
Stephen J. Keating
Assistant County Attorney

33 PP

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the Petition for a Writ of Certiorari should be denied because the Petitioners have failed to take the case first to the Florida Supreme Court, the highest state court to which the case could be taken.

(2) Whether the Petition for a Writ of Certiorari should be denied because, under the Fifth Amendment to the United States Constitution, it is well settled that "just compensation" means the fair market value of property taken, and the challenged Florida statute is not inconsistent with that principle.

TABLE OF CONTENTS

	Pages
Questions Presented For Review	i
Table of Contents	ii
Table of Authorities	iii
Statement of the Case	2
Reasons For Denying Petition For Writ of Certiorari	3
Conclusion	16
Appendix	17

TABLE OF AUTHORITIES

Cases	Pages
<i>Banks v. California</i> , 395 U.S. 708, 89 S.Ct. 1901, 23 L.Ed.2d 653	4
<i>Dodi Publishing Co. v. Editorial America, S.A.</i> , 385 So.2d 1369 (Fla. 1980)	6, 7
<i>Equitable Life Assurance Society v. Brown</i> , 187 U.S. 308, 47 L.Ed. 308	8
<i>Georgia-Pacific v. United States</i> , 640 F.2d 328 (1980)	12-14
<i>Ogden v. Saunders</i> , 25 U.S. 213, 12 Wheat. 213, 6 L.Ed. 606 (1827)	12
<i>Robles Del Mar, Inc. v. Town of Indian River Shores</i> , 379 So.2d 967 (Fla. App. 4th 1979)	7
<i>State Road Department v. Abel Investment Co.</i> , 165 So.2d 832 (Fla. 2d DCA 1964), <i>cert. den.</i> , 169 So.2d 485	9, 11
<i>State Road Department v. Bramlett</i> , 189 So.2d 481 (Fla. 1966)	5, 9, 11
<i>Stratton v. Stratton</i> , 239 U.S. 55, 36 S.Ct. 26, 59 L.Ed. 55	3, 4

TABLE OF AUTHORITIES (Continued)

Cases	Pages
<i>United States v. 564.54 Acres of Land</i> , 441 U.S. 506, 99 S.Ct. 1854, 60 L.Ed.2d 435 (1979)	15
<i>United States v. 499.472 Acres of Land More or Less in Brazoria</i> , 701 F.2d 545 (5th CCA 1983)	14
<i>United States v. Miller</i> , 317 U.S. 369, 63 S.Ct. 276, 87 L.Ed. 336 (1943)	8, 9, 11, 12, 15
<i>Williams v. Florida</i> , 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446	3
OTHER	
28 U.S.C.A., §1257	3, 6, 7, 8
28 U.S.C.A., §1257(2) and (3)	3
Florida Rules of Appellate Procedure	
9.010	4
9.030(a)(2)	4
9.200(a)(3)	5
9.030(a)(2)(A)(i)&(ii)	4, 5, 7
9.030(a)(2)(A)(iv)	6, 7

TABLE OF AUTHORITIES (Continued)

Cases	Pages
Florida Constitution, 1968, as amended 1980:	
Art. V, §3(b)(3)	4, 6
Art. X, §6	5
Florida Statutes §73.071(3)(b) (1981)	5, 8, 10, 11
4 <i>Nichols on Eminent Domain</i> , §13.3 (rev. 3rd ed., 1976)	9



CASE NO. 83-2116

in the
Supreme Court
of the
United States

October Term, 1984

MICHELE R. SCHRAM, as Personal Representative
of the Estate of MICHAEL GAYDOS, deceased, and
individually; MILLER ADAMS and MARY ADAMS,
his wife; and NICK ADAMS and JOSIE ADAMS,
his wife,

Petitioners,

vs.

DADE COUNTY, a political subdivision of
the State of Florida,

Respondent.

On Petition for a Writ of Certiorari to the
District Court of Appeal of Florida, Third District

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

The Petitioners' Statement of the Case is adequate for the purpose of the Petition. Three points only need to be added:

1) The properties taken by the condemnor under the eminent domain power were both total, not partial takings.

2) The trial court allowed the jury to award to the owners the fair market value of their properties totally taken, and excluded the property owners' proffered testimony of what it would cost them to purchase other replacement properties.

3) As the case involved "total takings" no business damages were allowed to be awarded.

REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

I

The Petition, in its "Jurisdiction" statement, invokes Title 28 U.S.C.A, §1257(2) and (3). The Petition is for a Writ of Certiorari, however, and subsection (2) of that Title is therefore inapplicable.

Under Title 28, §1257, the Certiorari section,

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) by writ of certiorari, . . .

The decision of the Court of Appeals, Third District, of the State of Florida, which is the subject of this Petition for Certiorari, is not from the highest court of the State of Florida, nor is it from the "highest court of [the] state in which a decision could be had." For that reason, therefore, this Petition should be denied.

Under this Court's certiorari jurisdiction, Title 28 U.S.C.A., §1257(3), the judgment of an intermediate state appellate court is that of the highest court in which decision can be had if the state law makes its decision final and non-reviewable. *Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446. If, however, there is discretionary review by a higher state court, the exercise of such discretion must be sought in the state courts. *Stratton v. Stratton*, 239 U.S. 55, 36 S.Ct.

26, 59 L.Ed. 55; *Banks v. California*, 395 U.S. 708, 89 S.Ct. 1901, 23 L.Ed.2d 653.

The Petitioners have made no application to the Florida Supreme Court for a Writ of Certiorari, as they could have done, pursuant to Florida Appellate Rule 9.030(a)(2)(A)(i)&(ii).

Proceedings in the appellate courts of Florida, including the Florida Supreme Court, are governed by the Constitution of the State of Florida, 1968 as amended, Art. V, §3(b)(3), and by the Florida Rules of Appellate Procedure. Copies of the pertinent Florida Rules and the Florida constitutional section cited are appended hereto as Exhibit A.

Rule 9.010 of the Florida Rules states that "these rules . . . shall govern all proceedings commenced on or after [March 1, 1978] in the Supreme Court. . ." Fla.R.App.P. 9.030(a)(2) states as follows:

"(2) Discretionary Jurisdiction. The discretionary jurisdiction of the Supreme Court may be sought to review:

(A) decisions of district courts of appeal that:

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;"

In the case *sub judice*, as the Petitioners admit, the trial court upheld the constitutionality of a state statute, §73.071(b), Fla.Stat., [sic] under the Fifth and Fourteenth Amendments to the United States Constitution and under §6 of Art. X of the Constitution of the State of Florida. (This appears in the stipulated statement of parties to appeal, in petitioners' brief Exhibit G, p. 25.) The District Court of Appeals, Third District, affirmed, *per curiam*, citing *State Road Department v. Bramlett*, 189 So.2d 481 (Fla. 1966), and §73.071(3)(b), Fla.Stat. (1981), (which is the correct citation). A copy of that statute is contained herein as Exhibit B.

With reference to Rule 9.030(a)(2)(A)(i)&(ii) cited, *supra*, it should be pointed out that the "stipulated statement of parties to appeal" referred to above is a permissible device under Florida Appellate Rules to assist the appellate Court in limiting the bulk of the record on appeal. Fla.R.App.P. 9.200(a)(3) states:

"Stipulated Statement. The parties may prepare a stipulated statement showing how the issues to be presented arose and were decided in the lower tribunal, attaching a copy of the order to be reviewed and as much of the record in the lower tribunal as is necessary to a determination of the issues to be presented. . . ."

The *per curiam* opinion of the District Court of Appeals, Third District, which is the subject of this Petition for Writ of Certiorari, cited, *inter alia*, Section 73.071(3)(b), Fla.Stat. (1981). Exhibit F to Petitioner's Brief sets forth the evidence that the unconstitutionality of a cited statute under the Fifth and Fourteenth

Amendments to the United States Constitution was raised in the Third District Court of Appeals.

The Third District Court of Appeals, therefore, specifically upheld the constitutionality of a state statute. This was specifically raised by the Petitioner herein as is set forth in the Stipulated Statement. (Exhibit G to the Petition for Writ of Certiorari.) The opinion of the Third District Court of Appeals is reviewable by petition for writ of certiorari to the Florida Supreme Court under Fla.R.App.P. 9.030(a)(2)(A)(i) and (ii). For that reason, therefore, the case should properly have been brought, if at all, to the Florida Supreme Court, and not to the United States Supreme Court. Accordingly, it is respectfully suggested that the Petition for Writ of Certiorari should be denied for a lack of jurisdiction under Title 28, U.S.C.A. §1257.

II

The Petitioners' sole basis for their claim that this Court should allow certiorari jurisdiction is the pair of cases cited in the footnote to page 3 of Petitioners' Brief.

The *Dodi* case, *Dodi Publishing Co. v. Editorial America, S.A.*, 385 So.2d 1369 (Fla. 1980), deals with conflict certiorari. The Florida Supreme Court refused, in that case, to re-examine a case cited by a lower court in a *per curiam* affirmed opinion to see if it conflicted with other appellate decisions in the intermediate Florida Courts.

The case *sub judice* is not a "conflict" case, which would be covered by Fla.R.App.P. 9.030(a)(2)(A)(iv), but

one which may be taken to the Florida Supreme Court under Florida Constitution, Art. V, §3(b)(3) as amended 1980, and Fla.R.App.P. 9.030(a)(2)(A)(i) or (ii). (The rule, setting forth §§i, ii and iv is appended hereto as Exhibit C.)

The other case cited by Petitioners, *Robles Del Mar, Inc. v. Town of Indian River Shores*, 379 So.2d 967 (Fla.App. 4th 1979), but appearing later at 385 So.2d 1371, Supreme Court of Florida 1980, is also inapplicable. Petitioners contend that the *Robles* case supports their contention that the Third District Court of Appeals is the "highest court in which the decision could be had", but that case also apparently, but not clearly, deals with "conflict" certiorari, like the *Dodi* case on which they rely.

Neither *Dodi* nor *Robles* deal with Fla.R.App.P. 9.030(a)(2)(A)(i) and (ii), decisions of District Court of Appeals that "expressly declare valid a state statute," or "expressly construe a provision of the state or federal constitutions."

On the preliminary question of federal jurisdiction, therefore, the Petition should be denied, at least until such time as the Petitioners have attempted to have the case reviewed by the Florida Supreme Court.

III

In their Brief, Petitioners raise three "Questions Involved". As to the first, the "substantial federal question", the Petitioners devote only one one-sentence paragraph, at page 7 of the Brief. It is essential to the jurisdiction of the Supreme Court under §1257 of Title

28 U.S.C.A. that a substantial federal question has been properly raised in the state court proceedings. This federal question must be more than a formal one. It must not be so absolutely devoid of merit as to be frivolous. Nor can it be so explicitly foreclosed by prior decisions of the Supreme Court as to leave no room for real controversy. *Equitable Life Assurance Society v. Brown*, 187 U.S. 308, 311, 47 L.Ed. 308, 311.

The just compensation clause of the Fifth Amendment to the United States Constitution has been dealt with very specifically by the federal courts in eminent domain cases. The so-called "federal issue" has been fully settled previously. *United States v. Miller*, 317 U.S. 369, 63 S.Ct. 276, 87 L.Ed. 336 (1943).

It is, therefore, urged that there is no substantial federal question.

Next, in their "Questions Involved", numbers 2 and 3, Petitioners invoke the Fifth and Fourteenth Amendments to the United States Constitution in a mixed fashion. The "just compensation" requirement of the Fifth Amendment is the basis for question 2. In question 3, Petitioners throw in a reference to the Equal Protection Clause of the Fourteenth Amendment, but nowhere in the text is equal protection of the laws discussed further.

As the "rulings in the District Court of Appeal of Florida, Third District, limiting petitioners' damages" were based expressly on the constitutionality of §73.071(b), Fla.Stat., (Stipulated Statement of Parties to Appeal, Exh. G to Petitioners' Brief), and correctly cited also in Exhibit A to Petitioner's Brief as §73.071(3)(b), Fla.Stat. (1981), the questions numbered 2 and 3 by the Petitioners

are really one and the same. Petitioners' question 2 amounts to a claim that "just compensation" includes in addition to the fair market value of the property an extra increment for the purchase of "replacement properties." The third argument seems to be that just compensation must also include business damages.

The question involves whether, where under state law in total takings neither the cost of purchasing other replacement properties nor business damages are compensable, the statute in question violates the Fifth and Fourteenth Amendments of the federal constitution.

As the Petitioners are measuring the Florida Statute against the Fifth Amendment to the United States Constitution, the federal decisions concerning the meaning of the "just compensation" clause of the Fifth Amendment are controlling.

"Just compensation" means the "market value of the property". *United States v. Miller, supra*.

The prevailing rule in the United States is the payment of compensation for damage to or destruction of a business, attributable to the taking of property in a condemnation proceeding, is payable only when authorized by statute. 4 *Nichols on Eminent Domain*, §13.3 (rev.3rd ed., 1976). Indeed, the Florida courts have followed this rule, that is that business damage does not constitute a part of the constitutionally protected concept of "just" or "full" compensation and is compensable only if allowed by statute. *State Road Department v. Bramlett*, 189 So.2d 481 (Fla. 1966); *State Road Department v. Abel Investment Co.*, 165 So.2d 832 (Fla. 2d DCA 1964), *cert. den.*, 169 So.2d 485.

There is no authority in Florida for the proposition that a property owner is entitled, in addition to the fair market value of his property totally taken, also to an increment calculated on a basis of costs of purchasing replacement properties.

The sole discernible reason for Petitioners' claim that §73.071(3)(b), Fla.Stat., as applied, deprived an owner of real property of equal protection or due process of law is that the statute lacks a rational relationship to constitutionally permitted goals.

The Petitioners' claim that on its face (or for that matter otherwise) §73.071, Fla.Stat. is illogical or lacking in a rational relationship to the goal of achieving "just compensation" is erroneous.

The most obvious rational basis for the statute as it relates to business damages can be seen by reference to the statute's treatment of severance damages.

Under §73.071(3)(b), Fla.Stat., if, in an eminent domain case an entire parcel of real property is taken by a government agency, the condemning authority must pay the owner the value of the real property—land plus improvements—taken. If only a part of the real property is taken, in addition to the value of the property taken another amount may be awarded, called "severance damages". This is an estimate of the damage caused by the partial taking to the remaining portion of the property still owned by the condemnee.

The prime reason for granting severance damages in partial taking cases is that the owner has been left

"stuck with" his damaged remaining property. In total takings he has no such problem.

The same distinction exists with regard to business damages, which are in any event not an element of constitutionally protected damages but are in Florida awarded as a matter of legislative grace in certain circumstances. *State Road Department v. Bramlett*, *supra*; *State Road Department v. Abel Investment Co*, *supra*.

In total takings, under Florida law, as under federal law, *United States vs. Miller*, *supra*, no business damages are allowed. Under §73.071(3)(b), Fla.Stat., in partial takings (for established businesses of more than five years' duration) business damages may be assessed because the business owner is still possessed of a business which must be run on the piece of real estate which has been diminished in size because of the taking.

Where a total taking takes place the owner is paid fully for the real property and is enabled, if he desires to do so, to do business elsewhere, untrammelled by ownership of a business on property which has been reduced in size because of the taking.

The basis for the distinction between partial and total takings is, therefore, entirely rational.

In the Petition for Writ of Certiorari, the Petitioners claim that they should have received an award based not upon severance damages but for business damages. Both are excluded by the statute §73.071(3)(b), Fla.Stat., in "total" taking cases.

The claim is that "business damages" are part of "just compensation" for property taken for the purposes of the Fifth Amendment of the United States Constitution, and that the statute is therefore unconstitutional. In support of that proposition, the Petitioners cite several cases which are inapplicable and one of which strongly supports the decision of the trial court, affirmed below by the Florida Court of Appeals, Third District.

Petitioners cite the case of *Georgia-Pacific v. United States*, 640 F.2d 328 (1980), in support of the "rule" of *Ogden v. Saunders*, 25 U.S. 213, 12 Wheat. 213, 6 L.Ed. 606 (1827). The respondent has no objection to the general "rule" set forth in *Ogden*, but fails to see the significance of *Georgia-Pacific*.

Georgia-Pacific was a federal case involving a partial, not a total taking, of forested lands for a national park. The discussion in *Georgia-Pacific* involved a complicated factual dispute concerning severance, not business damages. Although much evidence was offered concerning the extra expense which the condemnees claimed they would have to incur to harvest the redwood timber on their remaining land, these expenses were an index of severance damage—damage to the property—and were not claimed as business damages, which are in any event not obtainable under federal law. *United States v. Miller, supra*.

To the contrary, however, two passages from the *Georgia-Pacific* opinion quoted by the Petitioners set forth the correct rule under federal eminent domain law:

“ ‘The owner must be compensated for what is taken from him, but that is done when he has paid its fair market value for all available uses and purposes.’ *United State v. Chandler-Dunbar Water Power Company*, 229 U.S. 53, 81, 33 S.Ct. 667, 679, 57 L.Ed. 1063 (1913). It has been said that a condemnee ‘is entitled to receive the value of what he has been deprived of, and no more. To award him less would be unjust to him; to award him more would be unjust to the public.’ *Bauman v. Ross*, 167 U.S. 548, 574, 17 S.Ct. 966, 976, 42 L.Ed. 270 (1897). Plaintiff has been paid the fair market value of the gravel deposit site and the gravel located thereon taken from it. It is not entitled to more.

“It is settled that not all losses suffered by the owner are compensable under the Fifth Amendment. The government must pay only for what it takes, not for opportunities which the owner may have lost. *United States ex rel. TVA v. Powelson*, *supra*, 319 U.S. at 281, 283-84, 63 S.Ct. at 1056-57. Since alternative gravel was available to plaintiff, the fact that plaintiff may have had to pay more for said gravel after the taking would suggest a business loss or the loss of future profits on its timber operations. Such losses are not compensable. (Citations omitted). Finally, it would not be unreasonable, in my opinion, to view this claim essentially as one for the recovery of

consequential damages. Under federal law,⁴³ there can be no recovery for consequential damages as a result of a taking. *Mitchell v. United States*, 267 U.S. 341, 345-46, 45 S.Ct. 293, 294, 69 L.Ed. 644 (1925); *United States v. 91.90 Acres of Land*, (69 F.Supp. 328, 332 (D.P.R. 1947))."

The Court in *Georgia-Pacific*, *supra*, went on to add at pages 364-65:

"In any event, it seems to me that this severance damages claim is, in essence, one for consequential damages and thus not compensable. . . . The claim as advanced by plaintiff seems to rest more on anticipated business operation frustrations or anticipated readjustment of business operations on the remainder lands because of the partial taking. Such business frustrations and readjustments have been held non-compensable." (Citations omitted).

Petitioners' citation to the case of *United States v. 499.472 Acres of Land More or Less in Brazoria*, 701 F.2d 545 (5th CCA 1983) is to a dictum which has no relationship to the *Ogden* case cited by the Petitioners, or to any other relevant point.

footnote⁴³ The measure of just compensation is governed by the United States Constitution. The Constitution has never been construed as requiring the payment of consequential damages. See *United States v. Miller*, 317 U.S. 369, 376, 379-80, 63 S.Ct. 276, 282-83, 87 L.Ed. 336 (1943). . . ."

Finally, in support of their claim under the Fifth Amendment, the Petitioners cite the case of *United States v. 564.54 Acres of Land*, 441 U.S. 506, 99 S.Ct. 1854, 60 L.Ed.2d 435 (1979). That case is fully supportive of the decision of the trial court and the court of appeals, State of Florida, Third District, in the case *sub judice*.

That case fully supports the well established rule of law set forth in the *Miller* case, *supra*, which they also cite. At page 1857 this Court said:

"The court therefore has employed the concept of fair market value to determine the condemnee's loss. Under this standard the owner is entitled to receive 'what a willing buyer will pay in cash to a willing seller' at the time of the taking." (citations omitted).


Nothing in *564.54 Acres* suggests any law to the contrary, and the case is totally consistent with the Respondents' position herein.

CONCLUSION

For the reasons set forth in the above arguments, the Petition for a Writ of Certiorari should, it is respectfully requested, be denied.

Respectfully submitted,

ROBERT A. GINSBURG
Dade County Attorney
16th Floor
Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130
(305) 375-5151

By: 
Stephen J. Keating
Assistant County Attorney
Attorney for Respondent

Appendix

INDEX TO APPENDIX

EXHIBIT A:

- (1) Article V, §3(b)(3), Florida Constitution
- (2) Article X, §6, Florida Constitution
- (3) Rule 9.010, Florida Rules of Appellate Procedure
- (4) Rule 9.200(a)(3), Florida Rules of Appellate Procedure
- (5) Rule 9.030 (a)(2), Florida Rules of Appellate Procedure

EXHIBIT B:

Section 73.071(3)(b), Florida Statutes (1981)

EXHIBIT C:

Rule 9.030(a)(2)(A)(i)(ii)(iv), Florida Rules of Appellate Procedure

EXHIBIT A(1)

Article V, §3(b)(3), Florida Constitution

ARTICLE V

JUDICIARY

* * *

SECTION 3. Supreme court.—

* * *

(b) JURISDICTION.—The supreme court:

* * *

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

* * *

EXHIBIT A(2)

Article X, §6, Florida Constitution

ARTICLE X

MISCELLANEOUS

* * *

SECTION 6. Eminent domain. —

(a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

EXHIBIT A(3)

Rule 9.010, Florida Rules of Appellate Procedure

Rule 9.010. Effective Date and Scope

These rules, cited as "Florida Rules of Appellate Procedure", and abbreviated "Fla.R.App.P.", shall take effect at 12:01 a.m. on March 1, 1978. They shall govern all proceedings commenced on or after that date in the Supreme Court, the district courts of appeal, and the circuit courts in the exercise of the jurisdiction described by Rule 9.030(c); provided that any appellate proceeding commenced before March 1, 1978, shall continue to its conclusion in the court in which it is then pending in accordance with the Florida Appellate Rules, 1962 Revision. These rules shall supersede all conflicting rules and statutes.

EXHIBIT A(4)

Rule 9.200(a)(3), Florida Rules of Appellate Procedure

Rule 9.200. The Record

(a) Contents.

* * *

(3) *Stipulated Statement.* The parties may prepare a stipulated statement showing how the issues to be presented arose and were decided in the lower tribunal, attaching a copy of the order to be reviewed and as much of the record in the lower tribunal as is necessary to a determination of the issues to be presented. The parties shall advise the clerk of their intention to rely upon a stipulated statement in lieu of the record as early in advance of filing as possible. The stipulated statement shall be filed by the parties and transmitted to the court by the clerk of the lower tribunal within the time prescribed for transmittal of the record.

* * *

EXHIBIT A(5)

Rule 9.030(a)(2), Florida Rules of Appellate Procedure

Rule 9.030. Jurisdiction of Courts.

(a) Jurisdiction of Supreme Court.

* * *

(2) *Discretionary Jurisdiction.* The discretionary jurisdiction of the Supreme Court may be sought to review:

(A) decisions of district courts of appeal that;⁵

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;

(v) pass upon a question certified to be of great public importance.

(vi) are certified to be in direct conflict with decisions of other district courts of appeal;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the Supreme Court, and;⁶

(i) to be of great public importance, or

(ii) to have a great effect on the proper administration of justice;

(C) questions of law certified by the Supreme Court of the United States or a United States Court of Appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida.⁷

EXHIBIT B

Section 73.071(3)(b), Florida Statutes (1981)

73.071 Jury trial; compensation, severance damages.—

* * *

(3) The jury shall determine solely the amount of compensation to be paid, which compensation shall include:

* * *

(b) Where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking, including, when the action is by the Division of Road Operations of the Department of Transportation, county, municipality, board, district or other public body for the condemnation of a right-of-way, and the effect of the taking of the property involved may damage or destroy an established business of more than 5 years' standing, owned by the party whose lands are being so taken, located upon adjoining lands owned or held by such party, the probable damages to such business which the denial of the use of the property so taken may reasonably cause; any person claiming the right to recover such special damages shall set forth in his written defenses the nature and extent of such damages; and

* * *

EXHIBIT C

Rule 9.030(a)(2)(A)(i)(ii)(iv) Florida Rules of Appellate Procedure

Rule 9.030. Jurisdiction of Courts

(a) Jurisdiction of Supreme Court.

* * *

(2) *Discretionary Jurisdiction.* The discretionary jurisdiction of the Supreme Court may be sought to review:

(A) decisions of district courts of appeal that;⁵

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

* * *

(iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;

* * *